

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KENNETH SALMON,	:	1:13-cv-2603
	:	
Plaintiff,	:	
	:	Hon. John E. Jones III
v.	:	
	:	Hon. Thomas M. Blewitt
WARDEN ROBERT KARNES, <i>et al.</i> ,	:	
	:	
Respondents.	:	

**ORDER**

**September 25, 2014**

Before the Court is the Report and Recommendation (Doc. 19) of United States Magistrate Judge Thomas M. Blewitt filed on January 29, 2014. Within the R&R, Magistrate Judge Blewitt recommends the following: (1) that Plaintiff's requests for injunctive and declaratory relief be dismissed; (2) that Plaintiff's request for money damages against the Lebanon County Correctional Facility ("LCCF") Defendants in their official capacities be dismissed; and (3) that Plaintiff's claims against Defendant inmate Riesterer be dismissed with prejudice.

The Court has reviewed the R&R and the Plaintiff's complaint in this matter, as well as letters written by Plaintiff to the Court that we construe to be an objection to the recommendation that Defendant inmate Riesterer be dismissed with prejudice from the case. In our view, the Magistrate Judge's

recommendations regarding Plaintiff's request for a declaration that the Defendant's violated his constitutional rights and his request for injunctive relief should be dismissed. Further, we agree that Plaintiff cannot seek money damages from the LCCF Defendants in their official capacities. However, we do not agree entirely with the Magistrate Judge's recommendation regarding Defendant inmate Riesterer. To be sure, Plaintiff cannot maintain 42 U.S.C. § 1983 claims against the inmate Defendant because he is not a state actor. However, Plaintiff may well be able to pursue his state tort claims against inmate Riesterer. In fact, in the pleading, Plaintiff specifically asserts claims of assault and battery against inmate Riesterer. Thus, we shall reject the Magistrate Judge's recommendation that inmate Riesterer be dismissed from the action.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Report and Recommendation (Doc. 19) of Magistrate Judge Blewitt is **ADOPTED IN PART** and **REJECTED IN PART** to the following extent:
  - a. The Plaintiff's requests for injunctive and declaratory relief are **DISMISSED**.
  - b. Claims for money damages against LCCF Defendants in their official capacities are **DISMISSED**.

- c. The Magistrate Judge's recommendation that Defendant Riesterer be dismissed with prejudice is **REJECTED**. The Magistrate Judge shall direct the U.S. Marshal to serve inmate Riesterer.
2. This matter is **REMANDED** to Magistrate Judge Blewitt for all further pre-trial management.

s/ John E. Jones III  
John E. Jones III  
United States District Judge